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Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FLEETWOOD HOMES OF FLORIDA AND CRAWFORD & COMPANY,
Petitioners,

v.

KENNETH S. APFEL, Commissioner of Social Security,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DERRICK E. COX, ESQUIRE
Counsel of record
Florida Bar No. 0858153
HURLEY, ROGNER, MILLER,
COX & WARANCH, P.A.
200 South Orange Avenue
SunTrust Tower, 20th Floor
Orlando, FL 32801
Telephone: 407-422-1455
Counsel for Petitioners

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QUESTION PRESENTED FOR REVIEW

Whether the United States Court of Appeals for the Eleventh Circuit erred in finding that Petitioners are precluded from being parties to a social security hearing under 42 U.S.C. 405(b)(1) and 20 C.F.R. 404.932(b) because petitioners are not "individuals" or "persons" under the Social Security Act.

PARTIES TO PROCEEDING

Pursuant to Rule 14.1(b), the parties to the proceedings before the United States Court of Appeals for the Eleventh Circuit are FLEETWOOD HOMES OF FLORIDA; CRAWFORD & COMPANY; and KENNETH S. APFEL, Commissioner of Social Security.

CORPORATE DISCLOSURE STATEMENT

FLEETWOOD ENTERPRISES, INC. is the parent corporation in this case. There is no publicly held company that owns 10% or more of this corporation's stock. CRAWFORD & COMPANY is the Florida servicing agent for FLEETWOOD ENTERPRISES, INC.

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1) Crawford & Company, Fleetwood Homes of Florida v. Kenneth S. Apfel, No. 99-2201 (11th Cir. Dec. 14, 2000) . . . . . Appendix A

2) Crawford & Company, Fleetwood Homes of Florida v. Kenneth S. Apfel, No. 98-65-CIV-ORL-18C
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3) S.S.A. Office of Hearings and Appeals, Order of Appeals Council (Dec. 30, 1997) . . . . . Appendix B-11

4) Crawford & Company, Fleetwood Homes of Florida v. John J. Callahan, No. 96-874-CIV-ORL-18 (M.D. Fla. Aug. 18, 1997) . Appendix B-13

5) S.S.A. Office of Hearings and Appeals, Order of Admin. Law Judge (July 11, 1996) . . . Appendix B-17

JURISDICTIONAL STATEMENT

A. The Order from the United States Court of Appeals for the Eleventh Circuit was entered on December 14, 2000.

B. This Court has jurisdiction to review on a Writ of Certiorari the Order in question, pursuant to 28 U.S.C. §1254.

STATUTES AND REGULATIONS INVOLVED IN THIS CASE

Statutes

42 U.S.C. §405(b)(1) . . Appendix C

42 U.S.C. §405(g) . . . . Appendix C

Regulation

20 C.F.R. 404.932

(b) ***Who are parties to a hearing.*** After a request for a hearing is made, you, the other parties to the initial, reconsidered, or revised determination, and any other person who shows in writing that his or her rights may be adversely affected by the hearing, are parties to the hearing. In addition, any other person may be made a party to the hearing if his or her rights may be adversely affected by the decision, and the administrative law judge notifies the person to appear at the hearing or to present evidence supporting his or her interest.

STATEMENT OF THE CASE

On August 19, 1994, DEBRA SCOTT (hereinafter "Scott") was injured in the course and scope of her employment while working for FLEETWOOD HOMES OF FLORIDA. FLEETWOOD HOMES and CRAWFORD & COMPANY, INC. ("Petitioners") provided workers' compensation benefits to Scott pursuant to Florida law.

Scott subsequently filed an application for social security disability benefits. In 1996, Petitioners filed a Motion to Intervene in Scott's social security disability case, because a favorable finding by the Administrative Law Judge ("ALJ") could adversely affect Petitioners.

On July 11, 1996, the ALJ entered an Order denying Petitioners' Motion to Intervene. Petitioners then filed a Petition for Review with the United

States District Court, Middle District of Florida, Orlando Division, on August 9, 1996. On August 18, 1997, the presiding United States Magistrate Judge, James G. Glazebrook, entered a Report and Recommendation, recommending that the action be dismissed without prejudice for lack of jurisdiction as there was no final order. Judge Glazebrook held that a decision is not final until the movant has obtained a decision from the Appeals Council. At that time, the Appeals Council had not yet ruled on Petitioners' Request for Review of the ALJ's Decision.

On December 30, 1997, the presiding Administrative Appeals Judge, John G. Wojciechowski, entered an Order dismissing Petitioners' Request for Review on the grounds that Petitioners were not proper parties to Scott's social security case. On January 23, 1998, Petitioners filed a

second Petition for Review with the United States District Court, Middle District, Orlando Division. The Commissioner of Social Security ("Commissioner") filed a Motion to dismiss the Petition for lack of standing and lack of subject matter jurisdiction. The Magistrate Judge recommended that the motion be granted on the basis that 42 U.S.C. §405(g) did not confer jurisdiction on the court. The Magistrate Judge found that Petitioners did not have jurisdiction because Petitioners were not individuals under 42 U.S.C. §405(b)(1).

On June 26, 1998, Petitioners filed a Memorandum of Law in Opposition to the Report and Recommendation of the Magistrate Judge, which was treated as a Motion for Rehearing, to the United States District Court, Middle District, Orlando Division. In the Memorandum

of Law in Opposition, Petitioners argued that the Magistrate Judge's ruling was contrary to Califano v. Yamasaki, 99 S.Ct. 2545 (1979) and Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois v. Richard Schweiker, 715 F.2d. 282 (7th Cir. 1983). On July 9, 1998, United States District Court Judge Kendall G. Sharpe rejected the Magistrate Judge's Report and Recommendation. Judge Sharpe reviewed Petitioners' Memorandum of Law in Opposition and found that Petitioners were proper parties to Scott's social security case. On November 30, 1998, Judge Sharpe signed an Order granting entry of Final Judgment.

On January 28, 1999, Commissioner filed a Notice of Appeal with the United States Court of Appeals for the Eleventh Circuit. On December 14, 2000, the United States Court of Appeals for the Eleventh Circuit

entered an Order reversing the District Court's decision. The Eleventh Circuit first found that they had jurisdiction to hear the issue on appeal under the collateral order doctrine. The Eleventh Circuit subsequently found that the issue on appeal was not moot. Turning to the merits of the appeal, the Eleventh Circuit found that petitioners were not individuals under 42 U.S.C. §405(b)(1) and 20 C.F.R. §404.932(b). The Eleventh Circuit found that since petitioners were corporate entities, they were not the individuals or persons enumerated by the Social Security Act or Regulations with a potential stake in the award of social security benefits to a particular claimant. As a result, the Eleventh Circuit found that Petitioners were not proper parties to Scott's social security hearing.

ARGUMENT

The United States Court of Appeals for the Eleventh Circuit erred in finding that Petitioners are precluded from being parties to a social security hearing under 42 U.S.C. 405(b)(1) and 20 C.F.R. 404.932(b) because petitioners are not "individuals" or "persons" under the Social Security Act.

The Eleventh Circuit found that Petitioners were precluded from being parties in Scott's social security case because Petitioners were not the individuals or persons enumerated by the Act or Regulations with a potential stake in the award of social security benefits. Petitioners contend that the Eleventh Circuit's decision conflicts with this Court's decision in Califano v. Yamasaki, 99 S.Ct. 2545 (1979) and the Seventh Circuit's decision in Attorney Registration and Disciplinary Commission v. Schweiker, 715 F.2d. 282 (7th Cir. 1983). In these cases, this

Court and the Seventh Circuit broadly construed the word "individual" to include entities similar to Petitioners.

In Califano, a class action was brought against the Secretary of the Department of Health, Education and Welfare because the Secretary was recouping overpayments of social security benefits. The District Court in Washington certified a nationwide class action and enjoined the Secretary from recouping benefits without the opportunity for a hearing. The United States Court of Appeals for the Ninth Circuit upheld the Order approving class certification.

The Secretary filed a Petition for Writ of Certiorari with this Court. The Secretary relied on the language of 42 U.S.C. §405(g) which authorizes suit by "any individual". The Secretary argued that this language contemplated a case by case

adjudication of social security claims that is incompatible with class relief. This Court rejected the Secretary's argument, holding that class action relief was appropriate. This Court held that "individual" under 42 U.S.C. §405(g) could be broadly construed to include a class action. See Califano, 442 U.S. at 700-701.

In Schweiker, the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois brought a complaint on its own behalf and on behalf of all Commission employees against Richard Schweiker, the Secretary of Health & Human Services. The complaint challenged the denial of social security benefits to Commission employees. The Secretary filed a Motion to Dismiss the Commission's Complaint for lack of jurisdiction under 42 U.S.C. §405(g). The United

States District Court for the Northern District of Illinois granted the Secretary's Motion to Dismiss for lack of jurisdiction.

The United States Court of Appeals for the Seventh Circuit reversed the District Court's decision. In reversing the District Court's decision, the Seventh Circuit stated that, "The hard question is whether the Commission is 'an individual' within the meaning of §405(g)." See Schweiker, 715 F.2d at 289. The Seventh Circuit relied on this Court's decision in Califano to find that the Commission was an individual. Id.

United States Supreme Court Rule 10(a) states that this Court will consider review on a Writ of Certiorari if the United States Court of Appeals has entered a decision in conflict with a decision of another United States Court of Appeals on the same important matter. United States

Supreme Court Rule 10(c) states that this Court will consider review on a Writ of Certiorari if a United States Court of Appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court. As shown above, both rules apply in this case.

Judge Sharpe, the District Court Judge in this case, reviewed Califano and Schweiker and found that Petitioners were proper parties under the Social Security Act. However, the Eleventh Circuit narrowly construed the words "individual" and "person" to exclude Petitioners. The Eleventh Circuit cited no prior authority for such a narrow construction of these words. As shown above, the only Social Security Act cases interpreting these words defined "individual" in broader terms.[1] In virtually every

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[1] In addition to Califano and Schweiker, a United States District Court in

other area of the law, words such as "individual" and "person" have been construed to include corporations.

The Eleventh Circuit's decision conflicts with this Court's interpretation of "individual". The Eleventh Circuit's decision conflicts with the Seventh Circuit's interpretation of "individual". Since the Eleventh Circuit's decision conflicts with a prior decision of this Court and a prior decision of the Seventh Circuit, Petitioners request that this Court consider review on the

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Massachussetts implicitly held that the entire Commonwealth of Massachussetts was an individual entitled to intervene in a class action lawsuit filed by various individuals against the Secretary of Health and Human Services for allegedly terminating their social security disability benefits. Avery v. Heckler, 584 F.Supp. 312 (U.S.D.C. Mass. 1984) aff'd, 762 F.2d 158 (1st Cir. 1985). Although the District Court did not directly address the issue presented in this case, the District Court found that plaintiffs had jurisdiction under 42 U.S.C. §405(g) and that the Commonwealth of Massachussetts was entitled to intervene in the social security claim.

Writ of Certiorari.

CONCLUSION

For the foregoing reasons, Petitioners request that the Petition for Writ of Certiorari be granted.

Respectfully submitted this _____ day of _____, 2001.

_____

DERRICK E. COX, ESQUIRE
(Counsel of record)
Florida Bar No. 0858153
HURLEY, ROGNER, MILLER,
COX & WARANCH, P.A.
200 South Orange Avenue
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Telephone: 407-422-1455
Counsel for Petitioners